# CITY COUNCIL MINUTES
## August 8, 2011
## REGULAR SESSION

The Regular Session of the Auburn City Council was held in the Council Chambers, City Hall, 1225 Lincoln Way, Auburn, California on Monday, August 8, 2011 at 6:00 p.m. with Mayor Kirby presiding and City Clerk Joseph G.R. Labrie recording the minutes.

**CALL TO ORDER**

**ROLL CALL:**

**Council Members Present:** Bridget Powers, Kevin Hanley, J. M. "Mike" Holmes, Keith Nesbitt, William W. Kirby (arrived at 5:20 p.m.)

**Council Members Absent:** None

**Staff Members Present:** City Manager Robert Richardson, City Attorney Michael Colantuono, Public Works Director Bernie Schroeder, Administrative Services Director Andy Heath, and Police Chief John Ruffcorn.

By **MOTION** adjourn to a Closed Session under Government Code Section 54957.6:

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the City in the litigation.

(1) **Existing Litigation:**
(G.C. 54956.9(a))

Name of Case: City of Auburn v. Sierra Patient and Caregiver Exchange, Inc. et al.

Names of Parties: Plaintiff: City of Auburn. Defendants: Sierra Patient and Caregiver Exchange, Inc. (dba S&R Blooms & Blossoms); Richard Miller; and Does 1-10

Case No. S-CV-0029599 (Placer Superior Court)

(2) **Conference with Labor Negotiators:**
(G.C. 54957.6)

Agency Designated Representative: Patrick Clark, Robert Richardson

Employee Group: Local 39

**MOTION: Holmes/ Powers/ Unanimously approved by voice**

## REPORT OUT OF CLOSED SESSION

No reportable action.

## PLEDGE OF ALLEGIANCE

## AGENDA APPROVAL

City Council Member Hanley requested the two issues on item 9 be switched to discuss the City Attorney's staff report first. With this change, the agenda was approved by consensus of the Council.

Richard Sanborn and O.C. Taylor requested item 9 be moved forward on the agenda. The request was not approved.

## CONSENT CALENDAR

1. **Warrants**

   By **RESOLUTION 11-91** approve Warrants # 77764 through 77987 totaling $1,358,769.63.

2. **Minutes**

   By **MOTION** approve City Council Minutes of July 11, 2011.

3. **Auburn Municipal Airport UST Manway Repairs Project - Award**

   By **RESOLUTION 11-92,** authorize the Director of Public Works to execute a construction contract with Walton Engineering, Inc. for the Auburn Municipal Airport UST Manway Repairs Project in an amount not to exceed $45,518.00.

4. **Implementation of the Last, Best and Final Offer with Stationary Engineers, Local 39**

   By **RESOLUTION 11-93,** implement the City's Last, Best and Final Offer to the Stationary Engineers, Local 39.

********** End of Consent Calendar **********

By **MOTION** approve the consent calendar.
**MOTION: Nesbitt/ Powers/ Approved 5:0**

5. **Public Comment**

Mayor Kirby addressed the city charter survey that was conducted in the city. He said his son received a survey call. He said the way the survey was conducted was "inappropriate and misrepresented".

## REPORTS

6. **City Council Committee Reports**

Council Member Holmes reported that six buildings in Auburn have been newly nominated for the National Register of Historic Places. He read part of the resolution of recognition from the State Historical Resources Commission. He reported that the re-dedication of the Old Fire House will be taking place on Aug 15th. He also reported that the Sierra Economic Development Corporation will be meeting at City Hall this Thursday regarding broadband expansion in the area.

Council Member Nesbitt reported the Capital Corridor Joint Powers Authority secured funding for an extra railroad car to be added in the Auburn to San Jose run in the next few years. He also reported on the retirement party held for Valerie Harris, the outgoing Police Chief. He thanked Police Chief John Ruffcorn and Shari Conley for all their hard work putting the party together.

Council Member Powers reported the Auburn Airport Business Park Association now has broadband access at the business park. She said they are also working on a monument sign for Highway 49.

Mayor Kirby reported on Auburn Movie Night. He said this Wednesday's show is at Regional Park.

## COUNCIL BUSINESS

7. **CalPERS Contract Amendment Ordinance – Section 21428 – Increase Industrial Disability Allowance to 75% of Final Compensation for Local Fire Members**

Administrative Services Director Andy Heath presented this item.

Hold a second reading of an **ORDINANCE 11-07**, by title only, approving an amendment to the contract between the City of Auburn and CalPERS, providing Section 21428 benefits for local fire members.
**MOTION: Holmes/ Powers/ Approved 5:0**

8. **Amgen Tour of California Support Letter**

Council Member Nesbitt presented this item. He said the proposal will be sent to Amgen soon. He said he would like this letter to accompany the proposal. He said due to the housing requirements to be a finish city for a stage, the focus remains on being a start city.

Council Member comments followed regarding this event being great for the community.

By **MOTION,** direct staff to send a letter to AMGEN officials regarding the City Council's support of the Tour of California returning to Auburn in 2012.

**MOTION: Powers/ Holmes/ Approved 5:0**

9. **Home Rule for Auburn Charter 2012**

1. Discuss the internal governance issues in light of the City Attorney's staff report and other information before the Council and give direction to staff.

City Attorney Michael Colantuono presented this item. He said his staff report focuses on the structure of government (the report is available in the City Clerk's office). He addressed section 201 which states the five council members would be the sole elected officials of the City. He said the only policy questions in this section would be how to address the ordinance power to provide for the filling of vacancies and how to handle the remaining term of the elected treasurer and clerk in office when the charter takes effect. He addressed section 202, entitled "Council Member Compensation." He said this sets the ceiling on compensation pursuant to California Government Code. He said this language preserves the limit on compensation and takes away council members right under state law to obtain pensions. He addressed section 204, which states the compensation and qualifications for City Clerk and City Treasurer would be set by ordinance. He reviewed the differences between having these positions appointed as opposed to elected. He addressed section 300, which is entitled "Performance Based Management and Budget." He said making the wording in this section flexible to account for emerging technology is an option.

Council Member Powers asked if section 201 can keep the City Clerk and City Treasurer positions elected and specify in section 204 qualifications for those elected positions. She also asked what the state ceiling for council member compensation is. She clarified that the city budget is already available on the City's website.

City Attorney Michael Colantuono said the choice of how the two positions are handled is up to the Council and ultimately the voters. He said the ceiling for council members is based on the city's population. He said population below 15,000 is set at $600 a month. He said the budget is currently on the website as a policy decision; the charter would make it a requirement.

Council Member Holmes asked if in section 204 the compensation and qualifications could be made by either ordinance or resolution.

City Attorney Michael Colantuono said it could read: "shall be established by the City Council;" and the Council could decide what form of action to use to establish compensation and qualifications.

Mayor Kirby clarified that Placer County currently runs the City of Auburn election.

Public Comment:

O.C. Taylor, resident of Auburn, asked the Council if the Charter would save money on sewer projects. He opposes the City Charter.

Jeff Cowen, resident of Auburn, said he is in favor of making the clerk and treasurer positions appointed.

Debora Faciana, resident of Auburn, inquired about how to receive a copy of the charter draft. She also asked if being a charter excludes the city from receiving state funds.

Richard Sanborn, resident of Auburn, spoke of the importance of maintaining an elected clerk and treasurer. He said if the charter goes to ballot he would like to see the sections separated out for individual votes.

Bob Snyder, resident of Auburn, spoke in favor of the clerk and treasurer being appointed.

Bill Radakovitz, resident of Auburn, spoke about the mass mailer sent to Auburn residents from the Operating Engineers Retiree Association. He said it was "full of misinformation." He spoke in favor of a City Charter.

Joe Labrie, City Clerk said the city council wants to eliminate his elected position because he speaks out. He said the Council approved, without any discussion last year, $500,000 in consultant fees. He cited the $50,000 consultant fee for a sidewalk, the $150,000 consultant fee for the airport runway lights. He also spoke about the newly built 4' x 8' 5"

wooden bus shelter on Auburn Ravine Road at Persimmon Drive at the cost of over $11,000.

Council Member Nesbitt said he is in favor of the wording suggested by the City Attorney to determine compensation and qualifications for section 204. He said he is also in favor of the elected officials in the clerk and treasurer positions serving the remainder of their terms.

Council Member Holmes also said he is in favor of the revision to section 204.

Council Member Powers suggested the issue of elected vs. appointed clerk / treasurer be a separate vote on the ballot.

City Attorney Michael Colantuono advised that the Council could place a draft charter on the ballot with another item stating: "if the draft charter is approved it shall be amended as follows" and addressing other issues. He said multiple measures can result in voter confusion.

Council Member Hanley said he would like to narrow the provision for filling a vacancy on council in section 201. He said he would like to clarify section 202 council compensation making it refer to the law "applicable to general law cities." He said he is in favor of section 204 stating that qualifications would be enacted by ordinance and compensation by resolution. He said section 300 enables city staff to focus on services provided to the residents. He said he is in favor of the City Attorney's analysis regarding limitations on taxing authority. He said as a charter city there would be no additional taxing authority beyond what a general law city has. He addressed the mass mailer received by residents of Auburn regarding zoning ordinances.

Mayor Kirby addressed questions brought up during public comment. He said this item was brought forward by Council Member Hanley. He said a copy of the draft charter is available on the city website. He said he is in favor of an appointed city clerk and treasurer. He said it is a "waste of money" to have these positions elected. He addressed the issue of consultants the city is required by state and federal regulations to have on projects.

City Attorney Michael Colantuono said the state and federal government do not distinguish between charter cities and general law cities for funding purposes. He then reviewed his recommendations to Council:

Direct staff regarding amendments agreed upon to the August 2, 2011 draft charter.

Direct the City Attorney to review the proposed charter and to provide any drafting suggestions he may have to be brought back before the Council August 22, 2011.

Direct staff to agendize resolutions to call a general or special election in 2012 to consider the charter and to place the charter on that ballot. The established election dates in 2012 are: April 10, June 5, and November 6. As noted above, an April or June date will avoid the need for a November election to the offices of City Clerk and City Treasurer if those offices are made appointive by the new charter.

2. Discuss Councilmember Hanley's recommendation and determine whether to direct staff to draft resolutions for consideration at a future meeting by which the Council could place a charter before the voters of the City for adoption.

   Council Member Hanley presented this item. He said 120 cities in California are Charter Cities. He said all the information regarding the draft charter has been available on the city's website and valuable input has been received. He said there are many benefits to the residents and business owners of a charter city. He said this is an opportunity to utilize the Home Rule provision in the California Constitution. He said Auburn faces a challenge due to the unfair influence of misleading mailers by outside of the area interests. He said this needs to be an open and honest discussion. He said the fundamental question is whether local residents, business owners, city staff and elected officials are capable of making municipal decisions for Auburn, or should the Legislature in Sacramento make decisions for Auburn. He discussed the importance of the exemption of prevailing wage for volunteers. He said another concern the charter addresses is the sewer costs to residents. He discussed the local bid process and the benefits. He said the charter would give the city broad flexibility and control on local ordinances.

   Council Member Powers asked about the success of cities who have adopted a charter. She asked about the process for charter amendments.

   Council Member Hanley said no city has ever gone from charter city back to general law city status. He also said cities have lowered their sewer repair costs by adopting a charter. He said charter amendments could be brought forward by the Council or by residents; then voted on by ballot.

   City Attorney Michael Colantuono said that, by approving the charter, the voters are not authorizing the Council to change the rules for initiative, referendum or recall.

Mayor Kirby asked about local bid preference in general law cities and legal services for a charter city.

Public Comment:

Jim Earp, resident of Roseville and representing California Alliance for Jobs, said he commissioned the poll. He said he conducted the poll as a public service. He provided a copy of the results. He addressed the exemption for volunteers receiving prevailing wage.

Cheryl Maki, resident of Auburn, spoke in favor of a charter city. She spoke about the exemption for volunteers being permanent through a charter, the disadvantage of prevailing wages and local preference in the bid process.

Steven Galyardt, resident of Auburn, spoke in favor of the charter city. He said the decision should be made by the residents of Auburn in an election.

Jeff Cowen, resident of Auburn, spoke in favor of the charter city being on the ballot. He spoke about the responsiveness of the current city council members. He said it's the citizens' responsibility to provide "checks and balances" on the Council. He asked the cost associated with creating a charter city and what state mandates are going to be subject to city control rather then state control.

Richard Sanborn, resident of Auburn, asked about separating the sections of the ordinance so that each issue can be voted on. He spoke about the pros and cons of flexibility in each section. He spoke about having honest officials in city government.

Tom Faciana, resident of Auburn, spoke about the move to a charter, related negative impacts, possible costs of litigation, special interest groups, and ensuring an open and public process.

Alan Askew, resident of Auburn, spoke in opposition of a charter.

Reece Browning, resident and business owner in Auburn, spoke in favor of the charter being on the ballot.

Richard Hall, resident and business owner in Auburn, spoke in favor of having local rule. He said "put it on the ballot;" the residents should choose.

Tony Hazarian, resident of Roseville, representing the Auburn Chamber of Commerce Board of Directors. He said July 20, 2011 the Chamber Board

of Directors voted to encourage the Auburn City Council to place the City Charter on the June 2012 ballot. He said the Chamber will play an active role in the process. He said the Chamber neither supports nor opposes the city charter itself, but believes it should be decided by the voters.

Robert Hane, resident of Auburn, spoke about the negative effects of not paying prevailing wages to the community. He spoke about annexing North Auburn to increase tax revenue.

Ron McKeown, resident of Auburn, spoke in opposition to a city charter.

Daniel Torrey, resident of Auburn, he said moving to a charter is "fixing something that is not broke." He asked questions about defining volunteers, union wages vs. prevailing wages, and decisions that would be made locally with a charter.

John Cooper, Associated General Contractors of California, spoke about removing the exemption of prevailing wage rule from the charter.

Thom Smith, resident of Auburn and business owner, said he received one of the "survey calls." He said it was apparent that it was an "anti-charter" interview. He said he is undecided on the issue, but supports voting on the charter.

Kathryn Hannan, resident of Auburn, spoke in opposition to the charter. She asked how long the 120 cities have been under their charters. She also said she is in favor of paying prevailing wages.

Jack Poulsen, resident of Auburn, said he supports a charter to get out from under the rule of Sacramento. He said he wants the straight facts and doesn't appreciate the mailer from the union.

Stewart Dodge, resident of Auburn, spoke in favor of the charter being decided by a vote of the people. He spoke against the mailer that went out by the union.

Harriet White, resident of North Auburn and formerly on the Board of Supervisors spoke in favor of local control with a charter.

Victoria Connolly, resident of Auburn, spoke about zoning and general plan issues. She asked about litigation against charter cities. She asked if there is perceived dissatisfaction with the current general law status.

Rich Johnson, resident of Auburn, spoke in favor of the charter going to an election. He said it needs to go to the public as one, easy-to-

understand document. He said he supports the clerk and treasurer appointed as written in the charter.

Debbie Faciana, resident of Auburn, spoke in favor of more public thought and participation. She asked about the types of volunteer work in question.

Jim Conway, resident of Danville, consultant to a statewide construction industry coalition, spoke in favor of prevailing wages and against local preference in the bidding process.

David Slane, resident of Auburn, spoke in favor of prevailing wages. He said including the exemption for prevailing wages in the charter is "short sighted."

Matt Spokely, resident of Auburn and Planning Commissioner, provided a comparison related to the prevailing wage vs. non-prevailing wage issue. He talked about the disadvantages of the "low bid process." He said he is in support of the charter going to the June 2012 election.

Mike Hogan, resident of Loomis and a local contractor, spoke against section 303, exemption of prevailing wage requirements. He provided a comparison of local projects detailing elements of the job cost. He said this is "an attack on the middle class."

Carolyn Metzker, resident of Auburn, she said she did not appreciate the mass mailer with false information. She said she supports putting the charter on the ballot.

Laura Sumner, resident of Auburn, spoke in opposition to the charter. She said it is a "solution in search of a problem." She spoke about some concerns she has with the disadvantages listed in the City Attorney's report.

Casey Conway, resident of Auburn, spoke in favor of putting the charter on the ballot. He said he is against prevailing wage and in support of local bid preference.

Ronnie Daniel, resident of Auburn, spoke in opposition to the charter.

Jon Falletti, resident of Auburn, spoke in favor of prevailing wages.

George Preston, resident of Auburn, spoke in favor of putting the charter on the ballot. He explained why he is in favor of a city charter.

Matt Kelly, Sacramento Building and Construction Trades Council, spoke about how prevailing wages are calculated. He spoke about charter cities that do not enact the prevailing wage exemption.

Bob Williams, resident of Weimar and "Union Representative," spoke about the importance of prevailing wage.

Glen Snyder, resident of Carmichael, spoke in favor of prevailing wages on projects.

Jerry Wilfley, resident of Auburn, spoke about the mass mailer from the union. He asked about prevailing wage and creating a charter summary of pros and cons. He said he would like the clerk / treasurer issue separate from the charter on the ballot.

Grant Bursell, resident of Auburn, spoke against the prevailing wage exemption.

Bob Snyder, resident of Auburn, spoke in favor of the charter being on the ballot.

Joe Labrie, City Clerk, said there is an omission of any mention of council term limits in the proposed charter. He suggested binding arbitration in unsettled labor disputes; prevailing wages on all contracts; and that the council should not be allowed to appoint a former councilmember when there is a vacancy on the council.

***Council recessed for 5 minutes***

Council Member Nesbitt said the city charter is well drafted. He spoke about the prevailing wage issue, public input, and letting the voters decide. He showed his disapproval in the tactics of the unions to sway Auburn residents. He addressed Mr. Labrie's comments about the airport and he addressed annexation. He said he is in favor of putting the charter on the ballot for the voters of Auburn to decide.

Council Member Powers clarified that the charter does not eliminate prevailing wages, only gives the city the option of exempting certain projects from paying prevailing wages. She said including the elimination of the clerk / treasurer positions in the charter may jeopardize passage of the charter.

In response to Council Member Powers' question, City Attorney Michael Colantuono explained the differences among the phrases "market wage," "living wage," and "prevailing wage."

Council Member Holmes said being a general law city is a "one size fits all" situation. He said legislation at the state level does not consider Auburn's unique requirements. He clarified that the charter is not eliminating the clerk / treasurer position. He addressed the union mailer he received. He said he supports putting the charter on the ballot in June 2012.

Council Member Hanley said the charter was not intended to be union vs. non-union; it is really about local control. He said his loyalty is to the Auburn resident and the Auburn business owner. He said it is not the role of government to determine wages, but to save taxpayer dollars on public projects. He recommended refining the charter, making it the best possible, bringing it back to Council in 2 weeks and putting in on the June 2012 ballot.

Mayor Kirby addressed the telephone survey, cost of litigation, ad hoc committee, other charter cities, seasonal work, annexation, transparency, and volunteer labor. He showed his support for more local control. He said a charter is more transparent, simpler, and will give the citizens more of a say on what the Council does.

City Attorney Michael Colantuono said that state law determines standards for adopting and amending a charter. He said 15% of the registered voters can propose an amendment to the charter; compared to 10% of the registered voters who can propose an initiative in a general law city. He addressed qualifications being stated for elected positions.

Council Member Powers stressed again she would prefer the elected clerk / treasurer position not be included in the charter.

Mayor Kirby said although he believes the clerk / treasurer position should not be elected, he agrees it could "muddy the waters."

By MOTION, direct the City Attorney to prepare a resolution for the August 22, 2011 meeting to call a special election to be consolidated with the state-wide primary in June of 2012 for the purpose of presenting a charter to the voters, with the understanding that the language of that charter will be determined at the August 22, 2011 meeting.

**MOTION: Holmes/ Hanley/ Approved 5:0**

Council Member Hanley said he would like to consider the option of a separate vote for elected vs. appointed city clerk / treasurer. He said he would like the language in the charter reviewed in terms of the bid process ensuring quality work.

Council comments followed regarding how the elected vs. appointed city clerk and treasurer issue should be handled.

**ADJOURNMENT**

Mayor Kirby adjourned the meeting in memory and honor of all the servicemen serving our Country at 10:08 p.m.

William W. Kirby, M.D., Mayor

Joseph G. R. Labrie, City Clerk